

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AAA INVEST,

Plaintiff,

and

WILLIAM AGBORUCHE,

Intervening Plaintiff-Appellant,

v

ALVIN TAYLOR,

Defendant-Appellee,

and

CHASE MANHATTAN BANK, as Trustee of IMC  
HOME EQUITY LOAN TRUST 1998-5,

Defendant.

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AAA INVEST,

Plaintiff-Appellant,

and

WILLIAM AGBORUCHE,

Intervening Plaintiff,

v

ALVIN TAYLOR,

Defendant-Appellee,

and

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UNPUBLISHED

April 24, 2007

No. 265266

Wayne Circuit Court

LC No. 03-337391-CH

No. 265326

Wayne Circuit Court

LC No. 03-337391-CH

CHASE MANHATTAN BANK, as Trustee of IMC  
HOME EQUITY LOAN TRUST 1998-5,

Defendant.

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Before: Owens, P.J., and Neff and White, JJ.

WHITE, J. (*concurring*).

I reach the same result as the majority, by much the same route of reasoning, but draw some differing conclusions along the way. I share the majority's frustration with the statutory scheme. I fear there may be some clarity in the law that is well-known to seasoned practitioners in the area, but not discoverable upon the most thorough and painstaking review of the prior and current statutory schemes, as well as the provisions of the Revised Judicature Act and court rules. Nevertheless, I must proceed on the basis of this review.

Initially, I make several observations in addition to the very detailed statement of facts and discussion of law set forth in the majority opinion. Under sections 140, 141 and 142 of the former General Property Tax Act (GPTA), a tax lien purchaser who received a tax deed due to the failure to redeem within one year of the tax sale, held title subject to an additional right of redemption or reconveyance, under which the property owner and other interested persons had a right to redeem the property for six months after the notice required by § 140 was given. AAA Invest paid the 1999 taxes in March, 2002, shortly before it received the tax deed based on the 1998 taxes. After receiving the tax deed, AAA Invest did not immediately send the notice required by § 140. Rather, it appears that this notice was sent in December 2002. This § 140 notice, provided to defendant and Chase, included the amounts owing for 1999 taxes as well as for the 1998 taxes. Nevertheless, under § 141 of the former GPTA, defendant was statutorily entitled to a reconveyance upon payment of the amounts related to the 1998 taxes, and was not required to pay defendant amounts applicable to the 1999 taxes.<sup>1</sup> Thus, upon payment of the amount necessary with respect to the 1998 taxes alone, all rights acquired by AAA Invest under the tax deed were extinguished.

AAA Invest continued, however, to hold a lien pursuant to MCL 211.78g(5). As noted by the majority, no method for foreclosing this lien is provided. Rather the statute simply provides that the tax redemption lien is in addition to the existing lien or interest, and has the same priority. Like the majority, I am not persuaded that the Legislature intended that the amount paid for the 1999 taxes would simply be added to and merged with AAA Invest's interest held under the tax deed for the 1998 taxes. Indeed, AAA Invest did not proceed in this fashion.

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<sup>1</sup> The GPTA has distinct redemption provisions with respect to taxes bought by private persons at a tax sale, and taxes bought from the state. When the former is involved, the amount to redeem is determined by reference to MCL 211.141, and does not include taxes paid for subsequent years. When the latter is involved, the amount required to redeem includes taxes that became due for subsequent years.

It did not seek a writ of assistance, or seek to quiet title, based on the failure to redeem within six months from the time of the § 140 notice. Rather, AAA Invest commenced an action for foreclosure. I agree that such an action was necessary.

It is unclear what procedure AAA Invest followed. It filed a “Complaint to Foreclose Tax Lien and for Other Relief.” “Other relief” referred to the second count, alleging unjust enrichment. The complaint simply recited the history with respect to the 1998 and 1999 taxes, stated that AAA Invest had paid the 1999 taxes and recorded its lien, and that while defendant had paid the 1998 taxes, the 1999 taxes remained unpaid, and sought to foreclose the tax lien granted under MCL 211.78(g)(4). No reference was made to the prior GPTA, and no attempt was made to invoke the governmental foreclosure provisions of the new GPTA. It appears to me that the complaint sought simple foreclosure in equity, to be followed by a judicial sale accompanied by a six-month redemption period.

At this point, I observe that the lien created pursuant to MCL 211.78g(5) appears to me to be similar to a lien acquired pursuant to MCL 211.141(4) of the former GPTA. MCL 211.140 provided that “a grantee or grantees under the tax deed issued by the state treasurer for the latest year’s taxes according to the records of the county register of deeds” is among those entitled to receive notice under § 140. Section 141(1) provides that a person with an interest in the property is entitled to receive

from a person claiming title under a tax deed . . . within 6 months after the return of service is filed . . . as prescribed in section 140, a release and quitclaim of all right and interest in the property acquired under the tax deed upon payment to the treasurer of the county in which the land is situated the amount paid for the purchase, together with an additional 50%, and personal or substituted service fees. . .

MCL 211.141(4) provides:

A quitclaim or reconveyance made under this section does not vest in the grantee title or interest in the property beyond that already owned by the grantee. The grantee is entitled to a lien on the property, or on parts of the property or interests in it not owned by the grantee, for the amount paid, or the portion of the amount paid that is lawfully chargeable to the parts or interests, in addition to the prior lien or other interest held by the grantee. A lien under this section may be enforced in a court of competent jurisdiction, with interest on the lien at the rate of 6% per annum from the date of the payment. The circuit court of the county in which the property is located has jurisdiction to enforce the liens provided for in this section without regard to the amount of the liens.

Thus, under the prior GPTA, if AAA Invest had held a tax deed based on the 1995 taxes, it would have been entitled to notice that the 1996 taxes had been purchased and remained unpaid, and if AAA Invest had then redeemed the property by paying the 1996 taxes, it would have been entitled to a release and quitclaim upon payment of the amount due under § 141. But, that quitclaim deed would have left AAA Invest with no greater title than it already held under the 1995 tax deed. In addition, it would have had a lien for the 1996 taxes, which lien would have been enforceable in circuit court. I conclude that the lien held by AAA Invest under MCL

211.78g is the equivalent to the lien formally provided for in § 141(4). However, while § 141(4) stated that such a lien is enforceable in circuit court, it did not set forth the procedure to be followed.

Guided by, but not in reliance on, this observation, I conclude that the trial court erred to the extent that it concluded that plaintiff did not possess a lien that could be judicially foreclosed by an action in the circuit court. Defendant's reliance on MCL 600.6062 is misplaced. Plaintiff was not required to proceed as if executing on a judgment. Rather, plaintiff had a statutory lien on the property. While the new GPTA provides no indication of how such a lien is to be enforced, it clearly provides for a lien nevertheless. As with the lien created under § 141(4), this lien is subject to judicial foreclosure by action in the circuit court. I conclude that the circuit court had jurisdiction to proceed on the complaint as a general equitable action to foreclose a lien on real property. Plaintiff's reference in its complaint to a "tax lien" was not fatal because plaintiff did not attempt to proceed as if it were a governmental unit.<sup>2</sup>

In any event, without regard to whether the proper foreclosure procedure was, in fact, followed, I agree that the circuit court did not err in setting the foreclosure sale aside. Under these circumstances, the action to foreclose was a strictly equitable action to foreclose a statutory lien that has no statutorily provided mechanism for foreclosure. A lien having been provided by statute, equity provides a foreclosure mechanism. See *Berry v Dehnke*, 302 Mich 614, 624-627; 5 NW2d 505 (1942). AAA Invest was not a mortgage holder, and it had no rights other than the right to be repaid for the 1999 taxes, which was secured by the redemption lien provided for in MCL 211.78g(5). AAA Invest's rights under § 78g(5) were equitable in nature. Having paid the 1999 taxes to preserve its interest in the property, and having saved the property from forfeiture by doing so, AAA Invest was entitled to be made whole. The foreclosure sale was conducted to enforce the redemption lien. However, just as equity provided AAA Invest with a procedure to enforce its lien, it also provided the circuit court with authority to grant relief from the foreclosure sale under the circumstances presented here, as set forth by the majority. Defendant and the mortgage holder misunderstood that the 1999 taxes were still owing and were subject to foreclosure. The forfeiture would have been considerable, and the windfall as well. Once satisfied that the circumstances warranted relief, the court's only obligation to Agboruche, the

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<sup>2</sup> Because no other procedure for a general foreclosure in equity is set forth by statute or court rule, I am of the view that the procedure that should be followed is the statutory procedure for foreclosure of a mortgage. Indeed, it appears that plaintiff may have followed this procedure. This procedure provides that a judicial sale cannot occur until six months after the complaint is filed, and provides for a six-month redemption period after sale. In the instant case, the complaint was filed on November 11, 2003, and after defendant's default was entered, AAA Invest obtained an order permitting sale at any time after February 13, 2004. However, the sale did not take place until May 11, 2004, after the six months had expired, and the judgment confirming sale provided for a redemption period. Plaintiff then waited six months before commencing summary proceedings to evict defendant.

purchaser at the foreclosure sale, was to make him whole. The court had authority to set aside the sale provided that Agboruche is compensated for the amount paid, plus interest and expenses. I would remand with instructions to determine the amount necessary to make Agboruche whole.

/s/ Helene N. White